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UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:

USA COMMERCIAL MORTGAGE
COMPANY,

USA CAPITAL REALTY ADVISORS,
LLC,¹

USA CAPITAL DIVERSIFIED TRUST
DEED FUND, LLC,

USA CAPITAL FIRST TRUST DEED
FUND, LLC,²

USA SECURITIES, LLC,³
Debtors.

Affects:

- ☐ All Debtors
☒ USA Commercial Mortgage Company
☐ USA Capital Realty Advisors, LLC
☐ USA Capital Diversified Trust Deed Fund, LLC
☐ USA Capital First Trust Deed Fund, LLC
☐ USA Securities, LLC

Case No. BK-S-06-10725-LBR
Case No. BK-S-06-10726-LBR¹
Case No. BK-S-06-10727-LBR
Case No. BK-S-06-10728-LBR²
Case No. BK-S-06-10729-LBR³

CHAPTER 11

Jointly Administered Under Case No.
BK-S-06-10725 LBR

**DECLARATION OF GEOFFREY L.
BERMAN IN SUPPORT OF
OMNIBUS OBJECTIONS OF
USACM TRUST TO PROOFS OF
CLAIM BASED UPON
INVESTMENT IN THE
CHARLEVOIX HOMES**

Date of Hearing: September 23, 2010
Time of Hearing: 10:30 a.m.
Estimated Time for Hearing: 10 minutes

Geoffrey L. Berman declares under penalty of perjury:

1. I am an adult person competent to testify in court.

2. I make this declaration based upon my personal knowledge, and upon the
records USA Commercial Mortgage Company.

¹ This bankruptcy case was closed on September 23, 2008.

² This bankruptcy case was closed on October 12, 2007.

³ This bankruptcy case was closed on December 21, 2007.

1 3. I am the Trustee of the USACM Liquidating Trust (“USACM Trust”), which
2 is an entity created by the Debtors’ Third Amended Joint Chapter 11 Plan of
3 Reorganization (“Plan”), in the jointly-administered bankruptcy cases, In re USA
4 Commercial Mortgage Company, BK-S-06-10725-LBR, pending in the United States
5 Bankruptcy Court for the District of Nevada.

6 4. In about March 2006, USACM circulated an Offer Sheet to prospective
7 Direct Lenders soliciting funding for a second position acquisition and development loan
8 to a borrower identified as “Charlevoix Homes, LLC” (“Borrower”). A copy of the Offer
9 Sheet is attached hereto as **Exhibit B** and incorporated by this reference. The total loan
10 amount proposed was \$3.4 million. The loan would be used by Charlevoix Homes to
11 develop a 92 lot subdivision in Chandler, Arizona. The Offer Sheet described the
12 investment as a “Subordinated Trust Deed” and noted that the investment would be
13 secured by a subordinated deed of trust to the senior lender, “M&I Bank in Phoenix.” The
14 Offer Sheet indicated that the loans would be repaid through the construction and sale of
15 homes and that the combined loan to value would be approximately 92% based on the bulk
16 value of finished lots. The loan to value figure listed in the Offer Sheet was supported by
17 an appraisal from Grumley Valuation & Consulting of Phoenix, Arizona dated February
18 17, 2006.

19 5. On April 2, 2006, Borrower made and delivered to various lenders, including
20 the Direct Lenders identified in **Exhibit A**, a “Promissory Note Secured by Deed of Trust”
21 (the “Note”) and a related “Loan Agreement” (“Loan Agreement”). The Note and Loan
22 Agreement provided for an acquisition and development loan of \$3,400,000

23 6. The Note is secured by a Deed of Trust, Assignment of Rents, Security
24 Agreement and Fixture Filing (“Deed of Trust”) on real property and improvements
25 thereon, as described in the Deed of Trust.
26

1 7. The Deed of Trust was recorded on April 6, 2006 in the Official Records of
2 the Maricopa County, Arizona.

3 8. The Deed of Trust was, pursuant to a Subordination Agreement executed on
4 April 6, 2006, in second position behind a \$15,000,000 acquisition and development loan
5 from M&I Marshall and Ilsley Bank ("M&I") and a future construction loan of \$8,300,000
6 also from M&I. The Subordination Agreement was recorded on April 6, 2006 in the
7 Official Records of the Maricopa County, Arizona.

8 9. According to documents entitled "Loan Summary" kept by USACM,
9 Borrower was performing on the Note as of July 31, 2006 and was still performing as of
10 February 28, 2007.

11 10. A review of the public records of Maricopa County indicates that M&I
12 foreclosed on the subject property on May 22, 2008. The Arizona Secretary of State's
13 website indicates that Charlevoix Homes, LLC was dissolved in November 2009 by the
14 state for an undeliverable address and is no longer in good standing.

15 11. During this bankruptcy case, USACM treated the Direct Lenders with
16 respect to any interim payments by the borrower in accordance with this Court's orders.
17 The Trust was not the successor servicer on this loan pursuant to the terms of the
18 confirmed Plan and therefore has not been the recipient of any payments made by the
19 borrower after the effective date of the confirmed Plan. Beyond what it was able to
20 determine from the Maricopa County public records, the USACM Trust does not know the

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24 ////

1 ultimate disposition of the Charlevoix Homes Loan, the collateral securing that loan or
2 whether the Direct Lenders were be repaid in whole or in part.

3 I declare under penalty of perjury that the foregoing is true and correct.

4 Dated: August 4, 2010

6 /s/Geoffrey L. Berman

Geoffrey L. Berman

LEWIS
AND
ROCA
LLP
LAWYERS

Copy of the foregoing (without exhibits)
mailed by first class
postage prepaid U.S. Mail on
August 4, 2010 to the
investors in the Charlevoix Homes Loan listed
on Exhibit A.

s/ Renee L. Creswell
Renee L. Creswell